

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 157 of 2014**Friday, this the 17<sup>th</sup> day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Havildar/Ambulance Assistant Umesh Kumar Singh (Army No. 13981726-N) of HQ Camp, AMC Centre and College, Lucknow  
S/o Late Kapildeo Singh  
R/o 58/2 Aamrapali Vihar, Raebareli Road, Telibagh,  
Lucknow (UP) – 226029**.... Applicant**Ld. Counsel for the Applicant : **Shri KKS Bisht**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Officer-in-Charge Army Medical Corps Records, Lucknow and Commandant AMC Centre and College, Lucknow.
4. Senior Registrar and Officer Commanding Troops, Military Hospital, CTC, Pune.
5. Company Commander, Military Hospital, (CTC), Pune.

**... Respondents**Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,  
Central Govt Counsel**ORDER (Oral)**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- “(a) Issue/pass an order or direction of appropriate nature to the respondents to quash/set-aside the Annual Confidential Report for the year 2007 which is totally subjective and inconsistent besides in violation of the provisions contained in Army Order 01/2001/MP.
- (b) Issue/pass an order or direction of appropriate nature to the respondents to given the applicant all service and monetary consequences which will accrue after imperative quashing/setting-aside the ACR for the year 2007.
- (c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (d) Allow this application with costs.”

2. The factual matrix of the case is that applicant was enrolled in the Army on 11.08.1990 and was discharged from service with effect from 31.08.2014 (AN) after rendering 24 years of service. The Screening Board for extension of two years service of the applicant in the rank of Havildar was held twice and on both the occasions, applicant was not found eligible for two years extension of service due to his ‘Low Average’ ACR for the year 2007 in terms of IHQ of MOD (Army) policy letter dated 20.09.2010. The applicant filed a statutory complaint dated 28.02.2013 to ignore ACR for the year 2007 and consider ACR of 2012 for extension of two years service which was rejected by the respondents vide order dated 21.02.2014. Being aggrieved, the applicant has filed the instant Original Application for grant of two years extension of service limit.

3. Learned counsel for the applicant submitted that applicant was promoted to the rank of Naik on 01.04.2007 and Havildar on 01.07.2012. AMC Records asked willingness of the applicant for

extension of service limit by two years vide their letter dated 26.05.2012, accordingly Willingness Certificate alongwith medical and disciplinary criteria of the applicant was forwarded to AMC Records vide letter dated 01.07.2012. The Screening Board for extension of two years service was done and applicant was intimated by AMC Records vide letter dated 14.07.2012 that he has not been granted two years extension of service due to 'Low Average' ACR grading for the year 2007. AMC Records again asked willingness in Sept. 2012 for holding another Screening Board and this time too, applicant was denied extension of two years service on the same ground of low ACR vide Records letter dated 26.10.2012.

4. Learned counsel for the applicant further submitted that it is indicative that Screening Board held second time against the policy for screening the applicant and denied extension. Applicant's ACR was due to be written on 01.01.2008 whereas it was initiated on 11.02.2008 which is contrary to the provisions of Army Order 01/2002/MP as there was no disciplinary case against the applicant till 31.01.2008. Accordingly, ACR for the year 2007 deserves to be set-aside. By initiating the delayed ACR on 11.02.2018, the IO and RO indulged in perceptible malafide and this malafide got manifested that Summary Trial of the applicant was conducted under Army Act Section 80 for an offence under Army Act Section 63. The charge against the applicant was that he was considered blameworthy for not keeping a tag on taking out the computer-print by an individual in Unit Run CSD Canteen on 15.12.2007 whereas the applicant was not connected with the same as he was not blamed at all by Court of

Inquiry. It is an established legal position that in the absence of non-compliance of proceeding under Army Rule 22 legally there could not be any Summary Trial proceedings under Army Act Section 80 which transpires that illegal Summary Trial was conducted without jurisdiction. Para 51 of Army Order 01/2002/MP was not followed being inconsistent grading awarded to the applicant. Once the ACR of 2007 is set aside automatically the applicant would be entitled for extension of two years service. He pleaded to set aside ACR for the year 2007 being subjective and inconsistent in violation of provisions contained in Army Order 01/2002/MP and grant two years extension of service to the applicant.

5. **Per contra**, learned counsel for the respondents submitted that as per para 3 of Appendix 'A' to IHQ of MoD (Army) letter dated 20.09.2010, every JCO/OR is required to be screened for extension of two years service prior to the date of his normal service limit. Accordingly, the applicant was screened for extension of two years service in the rank of Naik by the Extension Board in Sept. 2010. However, the applicant was not granted two years extension due to earning of 'Low Average' grading in ACR for the year 2007. Subsequently, the applicant was promoted to the rank of Havildar on 01.07.2012 based on his last three ACRs for the year 2009, 2010 & 2011. The applicant was again screened for extension of two years service in the rank of Havildar by the Extension Board for quarter ending June 2012 and not granted/extended service limit due to 'Low Average' grading in ACR for the year 2007. The applicant was again screened for extension of two years service for the quarter ending

Sept. 2012 as he was erroneously screened for extension of service in quarter ending June 2012. The applicant was found ineligible for extension of service for two years due to his 'Low Average' grading in ACR for the year 2007 in terms of IHQ of MOD (Army) policy letter dated 20.09.2010.

6. Learned counsel for the respondents further submitted that applicant was also awarded punishment of 'Reprimand' on 31.01.2008, however this punishment has no effect on grant of extension of service being black ink entry. The applicant filed a statutory complaint dated 28.02.2013 to ignore ACR for the year 2007 and consider ACR of 2012 for extension of two years service which was rejected by the respondents vide order dated 21.02.2014 being against the policy. He further submitted that with regard to grant of extension of service limit, the AFT (PB), New Delhi in OA No. 152 of 2011, ***Nk/AA Dharamveer Singh Dhayal vs. UOI & Ors***, decided on 26.04.2011 has held that "*The grant of extension is not a right of the applicant. His case has to be subject to the screening by the respondents as per the policy laid down. In case they find that incumbent is not suitable, they may decline to grant extension*". In view of policy, the applicant being not meeting the required criteria was not granted two years extension. He pleaded for dismissal of O.A.

7. We have heard learned counsel for both sides and perused the material placed on record.

8. We find that in the instant case, applicant was awarded punishment of 'Reprimand' on 31.01.2008 but this punishment has no effect on grant of extension of service being black ink entry. The ACR grading for the year 2007 was lowered due to punishment of 'Reprimand' awarded to the applicant during his employment in CSD Canteen of MH (CTC) Pune. The Screening Board for extension of two years service of the applicant in the rank of Havildar was held twice and on both the occasions, applicant was not found eligible for two years extension of service due to his 'Low Average' ACR for the year 2007 in terms of IHQ of MOD (Army) policy letter dated 20.09.2010.

9. In view of the above, we do not find any irregularity or illegality neither in Screening Board for taking last five years ACRs from the year 2007 to 2011 for consideration of extension nor in denying extension of two years service in the rank of Havildar. The denial of extension of service on the basis of 'Low Average' ACR for the year 2007 is procedurally correct as per policy on the subject and there is no violation of provisions of Army Order 01/2002/MP and Army Rule 22, as alleged by the applicant. The O.A. lacks merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

11. Pending Misc. Applications, if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: December, 2021

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